IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3846 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANABHAI SHIVABHAI VANKAR

Versus

UNDER SECRETARY

Appearance:

MR YN OZA for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his suspension order dated 16.3.1994 passed against him by the Department.

The petitioner was working as D.E.O. (Vocational) in the year 1984-'85. On the basis of the report submitted by the petitioner, one Bhagyalaxmi Institute of Commerce, Sabarmati, Ahmedabad was given recognition for the year 1985. It was found that the said Institute was not in existence and the petitioner was required to physically verify the existence of the said Institute. On the basis of the recognition given, the Government sanctioned scholarship, tuition fees and examination fees for 134 students to the tune of Rs.1,34,490/-. Regarding this episode, an enquiry was conducted by the concerned Police Inspector, who filed FIR on 19.6.1991. FIR was lodged by the Police Inspector and the petitioner was produced before the Magistrate on 9.11.1993. On the said date, the learned Magistrate ordered that the petitioner be taken into custody. However, since the petitioner obtained anticipatory bail, he remained at large on bail after being taken into custody. Thereafter, the petitioner came to be suspended on 16.3.1994, which is challenged by the petitioner by filing this petition.

At the time when this matter was admitted, interim relief was refused by the learned single Judge.

On behalf of the petitioner, it is vehemently submitted that it is not open for the respondents to continue the petitioner under suspension for an indefinite period, as, according to him, more than 10 years have passed. He, however, submitted that he is not aware about the exact position as on today. Mr.Kogje, learned AGP, has also submitted that he is not aware about the exact position as to what had happened to the criminal cases or regarding the departmental enquiry. Considering the fact that the petitioner is placed under suspension in view of the pendency of criminal cases, and since serious charges have been levelled against him, in my view, it cannot be said that the authority has committed any error in passing the suspension order. In the suspension order, it is mentioned that the petitioner is subjected to criminal cases for misappropriating Government money and that is the basis for passing the suspension order. It is, however, required to be noted that, more than 10 years have passed. Under the circumstances, while confirming the suspension order, it is directed that in case the petitioner is acquitted in the criminal oases, the Department shall do the needful to pass appropriate consequential orders, as the petitioner cannot be kept under suspension for an indefinite period and if the petitioner is acquitted by the criminal courts, naturally, there is no question of

keeping him under suspension for a long period.

Since neither the learned Advocate for the petitioner nor the learned AGP is able to furnish the latest position in connection with this matter, whether the petitioner is acquitted in the criminal cases, or, whether the petitioner is exonerated in the departmental enquiry, if initiated and completed by this time, the present directions are given.

The order of suspension is not required to be interfered with by this Court in view of the fact that the petitioner is placed under suspension in view of the serious criminal cases. However, the authority may consider the aspect as indicated in this order regarding the outcome of the criminal cases and may pass appropriate consequential orders accordingly, within a period of three months from today. If the petitioner is exonerated in the criminal cases, naturally, the Department will have to give all the consequential benefits as the suspension order is passed only in view of the criminal cases initiated against the petitioner.

Subject to what is stated above, the petition is disposed of by discharging the rule. No costs.

7th July, 2004 (P.B. Majmudar, J.)

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(apj)